



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 220720-0158]

RIN 0648-BK86

Seafood Import Procedures and Certification of Admissibility

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS intends to revise regulations concerning the Certification of Admissibility (COA) program used to allow entry of certain fish or fish products otherwise subject to trade restrictions. Specifically, NMFS is considering automating the submission of COA information through use of the Automated Commercial Environment (ACE) managed by U.S. Customs and Border Protection (CBP). Such automated processing may require the submission of additional data elements. Prior to drafting a proposed rule, NMFS is issuing this advance notice of proposed rulemaking requesting input from stakeholders and interested parties on the reporting and recordkeeping burden of the certification of admissibility, on the procedures for using certification in the entry filing process, and on ways to reduce the reporting burden and expedite release of admissible shipments through use of the ACE single window portal. Based on comments received and NMFS' overall assessment of concerns

raised, NMFS will consider these concerns in developing the proposed rule to revise and automate the submission of COA information.

DATES: Written comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Written comments on this action, identified by NOAA-NMFS-2022-0057, may be submitted by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0057 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements expected to be addressed in the proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301-427-8350; or email: *christopher.rogers@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

NMFS is developing a proposed rule to revise regulations concerning the Certification of Admissibility (COA) used to allow entry of fish or fish products that are otherwise subject to trade restrictions. These program revisions will include automated entry filing of information required to establish admissibility of the shipment. As noted in the "specific questions" below, currently, NMFS uses paper format COAs that require signatures.

Several statutes, including the Marine Mammal Protection Act (MMPA) and the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), contain provisions that authorize imposition of trade restrictions on certain fish products depending on the conditions of harvest or production. While NMFS has authority under MMPA and Moratorium Protection

Act implementing regulations to impose trade restrictions to target problematic activity, the regulations also allow for entry of some fish and fish products harvested from fishing activity that is not a source of concern.

For example, under the MMPA, fisheries that export to the United States must have marine mammal bycatch mitigation measures comparable in effectiveness to those required in U.S. fisheries (see 16 U.S.C. 1371(a)(2) and 50 CFR 216.24(h)). NMFS makes comparability findings on the basis of individual commercial fishing technologies/methods. In this manner, a nation harvesting tuna in a hook-and-line fishery with minimal interactions with marine mammals may receive a comparability finding for that fishery, but might not receive such a finding for a gillnet fishery that causes serious injury and/or mortality to marine mammals in excess of US standards.

In such a case, tuna from the hook-and-line fishery of that nation would be admissible but tuna from the gillnet fishery would be prohibited. NMFS would specify to CBP that tuna from the nation is prohibited by listing the harmonized tariff schedule (HTS) codes applicable to the restricted fish product and the country of origin applicable to the restriction. Entries filed with the specified combination (HTS x country) would be rejected in the CBP Automated Commercial Environment (ACE). However, if the exporter provides to the U.S. importer a COA validated by officials of the harvesting nation to document that the tuna was harvested in the hook fishery, the importer can

file that information in ACE to gain entry (see: 50 CFR 216.24(h) (9) (iii)).

Similarly, the Moratorium Protection Act contains provisions to negatively certify nations for problematic activity in their fisheries (e.g., illegal, unreported or unregulated fishing; excessive bycatch of protected species; unsustainable fishing for sharks) (see: 16 U.S.C. 1826j, 1826k and 50 CFR 300.202, 203, 204). Negatively certified nations are subject to trade restrictions for products harvested in the fisheries of concern. However, the statute authorizes alternative procedures to exclude fish and fish products by allowing entry on a shipment by shipment or vessel specific basis (see: 16 U.S.C. 1826j(d) (2), 16 U.S.C. 1826k(c) (4) and 50 CFR 300.207, 208, 209). In the case of trade restrictions, NMFS would notify CBP of the applicable HTS codes and country of origin, but note that the importer could submit a COA validated by the exporting nation to document that the fish was not harvested in the fishery or by the vessel subject to trade restrictions (see 50 CFR 300.207, 208, 209).

To date, NMFS has applied a COA requirement in one situation. Under MMPA authority, certain fishery products from Mexico that were harvested by specified fishing gear in the Upper Gulf of California are subject to trade restrictions (see 85 FR 13626, March 9, 2020). However, those fish products are admissible, when documented by Mexico via the COA as having been harvested in other fishing areas outside the Upper Gulf of

California or with other fishing gear not subject to the import restriction. See this NMFS web site for detailed information on the current trade restrictions and provisions for use of the COA to file entries: <https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions>

NMFS intends to revise the MMPA and Moratorium Protection Act regulations to automate the submission of COAs. This would continue to facilitate enforcement of trade restrictions while also reducing the reporting and record keeping burden on the trade community. To this end, NMFS is working with CBP to automate the process in ACE for applying fish product trade restrictions including situations when entry is allowed through use of the COA. CBP will develop functionality within the ACE portal to allow NMFS to specify trade restrictions for particular fish products harvested by and/or exported from specific nations. NMFS would also specify when those products may be entered with a COA documenting that the fish products were harvested by a method or in a location not subject to the specified trade restriction. In some instances, this will require additional information from the foreign exporter that would be filed in ACE by the U.S. importer (e.g., fishing area and fishing gear).

NMFS seeks comment on the COA provisions from the trade community affected by the current MMPA trade restrictions on certain fish products from Mexico. NMFS also seeks comment from exporters, importers, and customs brokers of fish or fish

products who are subject to reporting requirements at entry through the ACE portal. In addition, NMFS seeks comments from software developers who develop programs for trade community computer systems to interface with ACE.

Specific questions for which NMFS seeks include:

What are the relative differences in time and cost burden of reporting an entry that requires a COA in paper format (document image submission) relative to electronic filing of a message set that includes COA data elements? What is the impact on entry filing if the COA process is automated in ACE?

What supporting documents are available to importers and could be submitted through ACE at entry filing to validate information from the COA (e.g., shipping manifest, commercial invoice)?

Currently, the COA regulations require a signature of the importer of record attesting to the contents of the shipment relative to the description of fish provided by the foreign nation exporter. This attestation can only be made post-release so a corrected entry summary is required to resubmit the COA image file with the importer signature via the ACE Document Image System (DIS). What are the cost and time burdens associated with the corrected entry summary? Are there other more efficient means by which NMFS can collect the importer attestation?

What is the time frame needed for software development and testing prior to implementing automated entry processes for

products that could be admitted when filed with a COA message set or COA image files? What is the scope of programming requirements for customs brokers so that new COA entry filing software is not needed for each specific trade restriction that might be imposed (*i.e.*, adjustment for a new restriction defined by HTS code + exporting nation)?

Should NMFS seek to develop an electronic version of the COA so that a foreign exporter could enter the required information online in a NMFS system and the U.S. importer could gain secure access to the individual shipment information for the purposes of transferring that information to ACE via the entry filing process?

NMFS is also interested in any additional comments or suggestions for improving the implementation of the Certification of Admissibility provisions pursuant to regulations issued under 50 CFR parts 216 and 300.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1372(a)(2); 16 U.S.C. 1826j(d)(2); 16 U.S.C. 1826k(c)(4)

Dated: July 20, 2022.

Kimberly Damon-Randall,

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National Marine Fisheries Service.

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